

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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SOUTHERN DISTRICT OF CALIFORNIA  
BY Joanne L. Miller

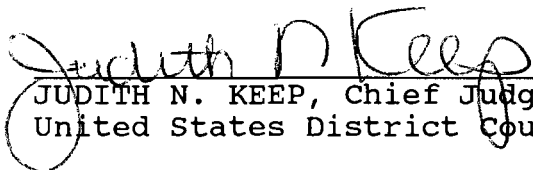
IN THE MATTER OF ARBITRATION  
AND MEDIATION RULES


)


GENERAL ORDER NO. 387

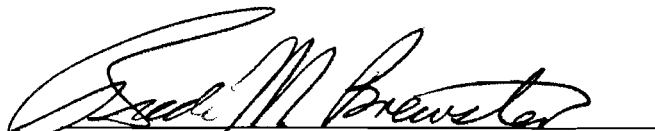
The attached Arbitration and Mediation Rules are approved and  
adopted by the court effective January 9, 1992.

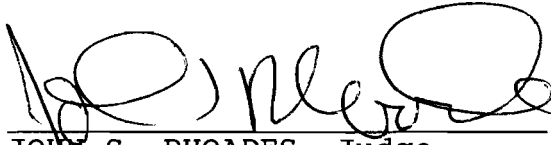
DATED: January 9, 1992

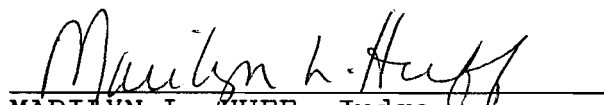
  
JUDITH N. KEEP, Chief Judge  
United States District Court

  
GORDON THOMPSON, JR., Judge  
United States District Court

  
EARL B. GILLIAM, Judge  
United States District Court

  
RUDI M. BREWSTER, Judge  
United States District Court

  
JOHN S. RHOADES, Judge  
United States District Court

  
MARILYN L. HUFF, Judge  
United States District Court

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1/6/92

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## Rule 600-1

### PURPOSE OF ARBITRATION AND MEDIATION

These rules govern references of selected actions to non binding arbitration and mediation. Their purpose is to provide for the speedy, fair, and economical resolution of controversies by informal procedures while preserving the right of all parties to a conventional trial.

## Rule 600-2

### PRELIMINARY PROCEDURE

(a) Initial AM Order. At the time of the ENE the court shall announce to the parties, and thereafter the clerk shall enter, in each case subject to mandatory arbitration or mediation, an initial AM order which:

1. refers the case for arbitration or mediation; and,
2. notifies the parties of their opportunity to select an agreed upon arbitrator. The parties may select an arbitrator from the list of arbitrators maintained by the court, or they may select any other person, whether or not an attorney, on the basis of that person's expertise or experience. To select an agreed upon arbitrator or mediator, the parties must, at the time of the ENE, announce the name of the arbitrator or mediator chosen and thereafter file with the court a stipulation identifying the arbitrator within three (3) days after the ENE.

(b) Discovery. Discovery shall proceed as in any other civil action.

(c) Dispositive Motions. In a case selected for mandatory arbitration or mediation, summary judgment and other dispositive motions will not be ruled upon by the court until the case has proceeded through an arbitration or mediation hearing and has returned to the court calendar.

## Rule 600-3

### ARBITRATORS AND MEDIATORS

(a) Approval. The court shall receive applications from attorneys who agree to serve as arbitrators or mediators without compensation. From time-to-time, the court will review the applications of attorneys for approval pursuant to section (b) of this rule. The court shall maintain a list of approved arbitrators and mediators, showing the name address, telephone number, and professional affiliation (if appropriate) of each. The court shall also maintain a file of resumes for the arbitrators and mediators, each resume to contain a short professional history of each.

(b) Eligibility. Any individual may be approved to serve as an arbitrator or mediator if the person:

1. has been for at least five (5) years a member of the bar of the highest court of any state or the District of Columbia; and
2. is a member of the bar of this court;

(c) Oath or Affirmation. Each arbitrator shall take an oath or affirmation similar to that prescribed by 28 U.S.C. § 453 before serving as an arbitrator or mediator. A written statement made under penalty of perjury and filed with the court will satisfy this requirement.

#### Rule 600-4

##### SELECTION OF THE ARBITRATOR OR MEDIATOR

(a) Selection by Agreement. If the parties select an agreed upon arbitrator or mediator at the time of the ENE and thereafter file with the court a timely stipulation pursuant to Rule 600-2(a)2, identifying an agreed upon arbitrator or mediator, the court shall thereupon appoint such person as the arbitrator or mediator and give notice of the appointment to the arbitrator or mediator and the parties.

(b) Selection by the Court. If the parties fail to select an agreed upon arbitrator or mediator at the time of the ENE, the court shall, at the ENE, appoint an arbitrator or mediator to serve and shall thereafter notify each party and the selected arbitrator or mediator of the appointment.

(c) Disqualification. On motion made to the court within five (5) days after the appointment described under section (b) of this rule, an arbitrator or mediator may be disqualified by the court for bias or prejudice as provided in 28 U.S.C. § 144. Further, an arbitrator or mediator shall disqualify her or himself if he or she could be required to do so under 28 U.S.C. § 455 if a District Judge or Magistrate Judge.

(d) Hearing. Regardless of the manner by which selection is made, the arbitrator or mediator shall set a hearing at a time and place convenient to all, but, in any event, to be held within forty-five (45) days after the ENE conference. Absent written court order, based upon good cause, there will not be any extensions of the deadline within which the hearing is to be held. It is the policy of the court to discourage continuances and extensions of the hearing and related deadlines.

## Rule 600-5

### ARBITRATION PROCEDURE

(a) No Ex Parte Communication. There shall be no ex parte communication between the arbitrator and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this rule prevents the arbitrator from discussing substantive issues in the case with all parties present or from assisting settlement negotiations between the parties at any time following appointment.

(b) Pre Hearing Exchange of Information. No later than ten (10) days prior to the hearing date, or at a time agreed upon among each of the parties and the arbitrator, each party shall serve on the arbitrator and other parties a statement which sets forth for such party the following information:

1. identification of the issues to be determined;
2. identification of all witnesses to be called at the arbitration hearing except for impeachment witnesses; and
3. identification of all exhibits to be presented at the hearing except for impeachment.

Each party may, at the same time, serve a pre hearing brief. Statements and briefs served under this rule are not to be filed with the court.

(c) Record and use of information. No official record of the arbitration hearing will be made. All proceedings of the arbitration including any statement made by any party, attorney or other participant, shall, in all respects, be protected and not reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. No party shall be bound by anything done or said at the arbitration unless a settlement is reached, in which event the agreement upon a settlement shall be reduced to writing and shall be binding upon all parties to that agreement. Nothing in this subsection shall preclude the parties from arranging for a reporter to be present for any arbitration which the parties stipulate will be binding.

(d) Subpoenas. Rule 45 of the Federal Rules of Civil Procedure shall apply to subpoenas for attendance of witnesses and the production of documentary evidence at an arbitration hearing under these rules.

(e) Testimony Under Oath or Affirmation. All witness shall testify under oath or affirmation administered by the arbitrator (who is designated a Master for this purpose only) or by any duly qualified person.

(f) Conduct of Hearing. At the opening of the arbitration hearing, the arbitrator shall make a written record of the place, time, and date of the hearing, and the presence of the parties and counsel. The arbitrator and the parties shall review the written statements concerning issues, witnesses, and exhibits served pursuant to section (b) of this rule. Plaintiff may then present its exhibits (copies only) and witnesses, who may be cross-examined. Defendant may then present its exhibits (copies only) and witnesses, who may be cross-examined. In the discretion of the arbitrator, this procedure may be varied.

(g) Evidence. The arbitrator shall weigh all evidence presented and assess its relevance and trustworthiness. The Federal Rules of Evidence shall not apply, except for rules applying to privilege.

(h) Conclusion of Hearing. When the parties state that they have no further exhibits or witnesses to offer, the arbitrator shall declare the hearing closed. Counsel may make oral argument, but the filing of post hearing briefs will ordinarily not be permitted. If the arbitrator decides to accept briefs, such briefs must be served upon the arbitrator and other parties as determined by the arbitrator.

(i) Sanctions for Failure to Proceed. For any failure of a party or its counsel to participate or proceed in good faith in accordance with these rules, the Court may impose sanctions.

#### Rule 600-6

##### ARBITRATION AWARD AND JUDGMENT

(a) Issuance of Award. The arbitrator shall issue the award either at the conclusion of the hearing or within five (5) court days of the date of the closing of the hearing or the receipt of post hearing briefs, whichever is later. If not announced at the hearing, the arbitrator shall send a copy of the award to the parties.

(b) Award Procedure. The award shall dispose of all monetary claims presented to the arbitrator and shall, if not announced orally at the time of the hearing, be signed by the arbitrator. The arbitrator is not required to issue an opinion explaining the award.

#### Rule 600-7

##### MEDIATION PROCEDURE

(a) No Ex Parte Communication. Prior to the proceeding, there shall be no ex parte communication between the mediator and any counsel or party on any matter touching the proceeding, except

with regard to scheduling matters. Nothing in this rule prevents the mediator from discussing substantive issues in the case with all parties present or from assisting settlement negotiations between the parties at any time following the opening of the mediation conference.

(b) Pre Hearing Exchange of Information. No later than ten (10) days prior to the hearing date, or at a time agreed upon among each of the parties and mediator, each party shall serve on the mediator and other parties a statement which sets forth for such party a concise statement of contentions regarding both liability and damages. Statements served under this rule are not to be filed with the court.

(c) Attendance. The attorney and the clients, unless excused by the mediator, shall personally attend the mediation conference and any adjourned sessions. The attorney shall be prepared to discuss all liability and damage issues as well as the position of the client relative to settlement. Parties whose defense is provided by a liability insurance company, and a representative of the insurer of said parties, shall attend and shall be empowered to bind the insurer to a settlement if a settlement can be reached within the limits of the policy in question.

(d) Record and use of information. All proceedings of the mediation conference, including any statement made by any party, attorney or other participant, shall, in all respects, be protected and not reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. No party shall be bound by anything done or said at the conference unless a settlement is reached, in which event the agreement upon a settlement shall be reduced to writing and shall be binding upon all parties to that agreement.

(e) Mediator's suggestions. If the mediator makes any oral or written suggestion as to the advisability of a change in any party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to the client. The mediator is under no obligation to make any written comments or recommendations but may, in his or her discretion, provide the attorneys with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the court or made available in whole or in part, directly or indirectly, either to the court or the jury.

(f) Notice of Compliance or noncompliance. If no settlement results from the mediation, the mediator shall promptly file with the court a statement showing that there has been compliance or noncompliance with the settlement and mediation requirements of this Rule but that no settlement has been reached. The case will then be placed back on the normal trial calendar schedule.

(g) Sanctions for Failure to Proceed. For any failure of a party, its representative or its counsel to participate or proceed in good faith in accordance with these rules, the Court may impose sanctions.

#### Rule 600-8

##### POST HEARING PROCEEDINGS

(b) Return to Court. Unless the case settles, the action shall be returned to the court's normal trial calendar schedule. The Magistrate Judge assigned to the case may use the results of the arbitration or mediation for case management or settlement purposes.

(c) Evidence From the Arbitration Hearing or Mediation Conference. At the trial of the action, the court shall not admit evidence that there has been an arbitration proceeding or mediation conference or result of either.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In the matter of	)	
	)	
ARBITRATION AND MEDIATION	)	
RULES	)	GENERAL ORDER NO. 387-A
_____	)	

GOOD CAUSE APPEARING, the Arbitration and Mediation Rules are amended to add the following section:

Rule 600-8  
MEDIATION PROCEDURE

(c) Confidentiality. This court, the mediator, all counsel and parties, and any other persons participating in the mediation process shall treat as confidential all written and oral communications made in connection with or during any mediation session. The court hereby extends to all such communications all the protection afforded by Federal Rule of Evidence 408 and by Federal Rule of Civil Procedure 68. In addition, unless otherwise stipulated by all parties and the mediator, the court hereby prohibits disclosure of any written or oral communication made by any party, counsel, mediator or other participant in connection with or during any mediation to anyone not involved in the litigation. Nor may such communication, absent stipulation by all parties and the mediator, be disclosed to the assigned trial judge or used for any purpose, including impeachment, in any pleading or future proceeding in court.

DATED: 1/3/00  
FILED: 1/5/00